

156 (4th Cir. 1995)). “Consequently, ‘[t]he allegations contained in the administrative charge of discrimination generally operate to limit the scope of any subsequent judicial complaint.’” *Id.* (quoting *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 962-63 (4th Cir. 1996)). “Importantly, a failure by the plaintiff to exhaust administrative remedies concerning a [covered federal discrimination] claim deprives the federal courts of subject matter jurisdiction over the claim.” *Jones v. Calvert Group, Ltd.*, 551 F.3d 297, 300 (4th Cir. 2009) (emphasis added).

2. Felder filed a charge of discrimination with the Equal Employment Opportunity Commission alleging only (1) disability discrimination under the Americans with Disabilities Act (“ADA”), and (2) retaliation related to her alleged ADA claim. (Exhibit 1).²

3. Felder’s Complaint now attempts to assert claims for race discrimination and retaliation under Title VII (ECF No. 1-1 at ¶¶ 65-71, 79-83)—neither of which claims were included in her charge. Neither Title VII nor race are identified as bases for the charge on the notice or mentioned in any way in the charge (Exhibit 1), preventing TD Bank and the investigative agencies from having any notice of such claims or including them within the scope of the investigation. These claims are thus subject to dismissal as a matter of law.

4. Similarly, Felder’s Complaint alleges a claim under the ADA for an alleged failure to provide reasonable accommodation (ECF No. 1-1 at ¶¶ 96-102), but there was no such contention in her charge. While Felder’s charge included a claim of disability discrimination and disability-related retaliation—alleging that she was purportedly treated differently on the basis of her disability—it includes no claim that Felder required, requested, or was denied any type of accommodation. (Exhibit 1.) Here again, this prevented TD Bank and the investigative agencies from having any notice of such a claim or including it within the scope of the investigation.

² A true and correct copy of Felder’s sworn EEOC charge is attached as Exhibit 1 to this Motion.

Accordingly, the claim for “Failure to Provide a Reasonable Accommodation under the ADA” is also subject to dismissal.

5. Because Felder did not include in her charge any (a) race discrimination or retaliation claims under Title VII, or (b) claims or contentions regarding an alleged failure to accommodate under the ADA, this Court is “deprive[d] . . . of subject matter jurisdiction over the claim[s],” rendering Felder’s First, Third, and Sixth Causes of Action subject to dismissal under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. *Jones*, 551 F.3d at 300.

WHEREFORE, TD Bank requests that the Court grant this Motion, dismiss the First, Third, and Sixth Causes of Action in Felder’s Complaint, and order Felder to amend her Complaint by omitting the improper claims and related allegations.

Dated this 4th day of February, 2021.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss has been served on Plaintiff Elizabeth Felder by depositing a copy hereof in the U.S. Mail, postage prepaid, on the 4th day of February, 2021, to her address of record as shown:

Elizabeth Felder
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Columbia, South Carolina 29212

/s/Lucas J. Asper

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